



Gobierno Municipal de Ponce

Oficina del Alcalde

PONCE, PUERTO RICO

JOSE G. TORMOS VEGA
(JOSELYN)
ALCALDE

June 23, 1982

Mr. James Ladue
Vice President
Cecos International, Inc.
P.O. Box 619
Niagara Falls, NY 14302

Dear Mr. Ladue:

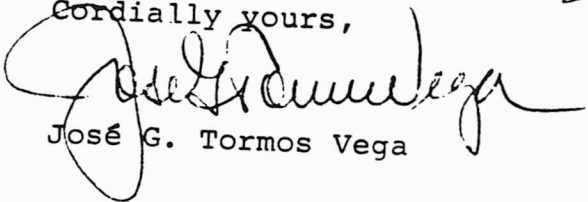
As you are well aware of, USEPA-Region II has recently determined that the only portions of the Ponce Municipal Landfill which are entitled to interim states are the disposal lagoons located therein. Furthermore, EPA has determined that these lagoons must be closed.

However, it is our feeling that the interests of the Municipality of Ponce and the people of Puerto Rico are best served not by accepting what we feel is a narrow-minded interpretations of EPA regulations, but by pursuing a permanent solution to the needs of the industrial community.

In this spirit I want to reiterate our continued commitment to this project and at the same time request from you all the assistance you can provide to us as petitioners of record in our effort to upgrade a facility that can truly protect the environment and public health in the most unquestionable manner.

In the process of supporting our position I have requested the assistance of the Puerto Rican Government at the state level, but in addition I urge you to according to our agreement, represent our position at any federal level you deem it necessary to enhance the viability of this very necessary project.

Cordially yours,


José G. Tormos Vega

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Gobierno Municipal de Ponce

Oficina del Alcalde

PONCE, PUERTO RICO

JOSE G. TORMOS VEGA
(JOSELYN)
ALCALDE

June 23, 1982

Ms. Anne M. Gorsuch
Administrator
U.S. Environmental
Protection Agency
401 M Street, S.W.
Washington, DC 20460

RE: Ponce Municipal Dump
ID No. 000010231

Dear Ms. Gorsuch:

It was with deep regret that I received communication from USEPA-Region II (see attachment) informing me of their decision not to recognize "existing facility" status for the Ponce Municipal landfill and their request to effect closure of existing operations.

We are deeply preoccupied with the fact that, what we believe is a very narrow interpretation of regulations originally enacted in an effort to secure the proper handling of hazardous wastes is in this case in effect betraying the purposes of the legislation. What is more, by single stroke of the pen, the Enforcement Component of Region II is setting policy that totally disregards both the industrial needs of the Island of P.R. and the specific situation of the Ponce Municipal landfill. When you consider the lack of availability of proper facilities for the whole of industry, the enormity of this decision becomes apparent. We cannot believe that the industrial development of all of P.R. and the safety of the people of Ponce, specifically, can be disregarded in the process sustaining what is unquestionably a mere interpretation of a very narrow slice of regulation.

The irrationality of the action taken by the Enforcement Division of Region II becomes self evident when its not result is a non solution for an important environmental problem.

Ms. Anne M. Gorsuch
page --2--
June 23, 1982

It should not be, and we beleive it is not, the policy of this Administration to soffocate all possibilities of an industrial development that respects both the enviroment and the health of the community.

In this spirit we respectfully request from you all possible assistance in rectifying a situation that should have never been.

Sincerely yours,



José G. Tormos Vega
Mayor of Ponce

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cc: Governor Carlos Romero Barceló
Jacqueline Schaffer
Baltasar Corrada del Rio

Enclosure

JOSE M. MADERA
ADMINISTRATOR

June 25, 1982

Ms. Anne M. Gorsuch
Administrator
U.S. Environmental
Protection Agency
401 M Street, S.W.
Washington, DC 20460

Dear Ms. Gorsuch:

I have just received notice from the mayor of Ponce on the denial of USEPA-Region II to recognize the Ponce Municipal Landfill as a "hazardous waste existing facility" under section 3005 of RCRA. The implications of such decision at this time, we believe, are astonishing since in reality it does nothing but close the doors to the proper handling of hazardous wastes in Puerto Rico.

The proper handling and disposal of hazardous substances is very much a priority of this Administration given the delicate ecological balance of an island of comparatively small geographical dimensions and our inviolable commitment to the health of our people and our environment. On the other hand, in my position as Administrator of the agency entrusted with the health and well-being of our economic development, I cannot but consider this initiative as devastating. In very real terms USEPA-Region II has required from us to put a screeching halt to all industrial development that depends on the essential infrastructure for the disposal of hazardous materials on a permanent basis. I will leave aside for the moment the fact that this decision offers no viable alternatives for the solution of the basic environmental problem. This interpretation of RCRA regulations, obviously stems from a narrow-minded appreciation of the problem that evidently ignores the universe of the issue and its multitude implications.

We do not have at present an acceptable facility for the proper disposal of hazardous waste in the island. We have been denied the option of upgrading a facility to meet our present and future needs. We have not been provided with

options that realistically could improve the situation in the foreseeable future. But we do have hazardous wastes to dispose of and a growing industrial community with investment needs for the appropriate infrastructure.

Because of the reasons stated above, I am compelled to ask for your assistance in this matter since it is of urgent priority that the issue be resolved in favor of both industry and environment. It is our sincere belief that this initiative clearly contradicts the reasons for the enactment of this legislation. It is also our hope that policy decisions be made to resolve it in a fair and equitable manner.

Cordially yours,



Jose R. Madera

cc: Governor Carlos Romero Barceló
Joselyn Tormos Vega
Baltasar Corrada del Río
Jacqueline Schafer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278

JUL 8 1982

Jose Tormos-Vega, Mayor
Casa Consistorial
Municipality of Ponce
Ponce, Puerto Rico 00731

Re: Ponce Municipal Dump
I.D. No. PRT000010231

Dear Mayor Tormos-Vega:

I am writing at this time as a follow-up to your meeting of July 2, 1982, with Jacqueline Schafer, Regional Administrator of Region II. At that meeting, you were informed that, based on information available to the Environmental Protection Agency ("EPA") at the present time, the landfill located at the above-referenced facility did not appear to be eligible for interim status as a hazardous waste facility pursuant to Section 3005 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.

The basis for the decision that was made with respect to the landfill was its apparent failure to meet the definition of "existing facility" contained within the regulations promulgated pursuant to Section 3005. The criteria for qualifying as an "existing facility" are as follows:

1. The facility must have been receiving waste defined as "hazardous" within the meaning of the Act on or before November 19, 1980 (the effective date of the RCRA regulations).
2. The facility must have been authorized to accept the hazardous wastes at that time.

The Agency would be willing to consider any information that Ponce is able to provide with respect to these two issues and their effect on the status of the landfill at the Ponce Municipal Dump. Of particular value to EPA in making any determination as to whether the landfill met condition one (1), above, would be any records maintained by the Municipality which describe, with some degree of specificity, the hazardous wastes which were received and disposed of at the landfill on or before November 19, 1980. "Records," in this case, would include manifests, receipts, tipping bills, etc. Please note that the wastes described must meet the criteria for hazardous waste set forth in 40 CFR Part 261.

Evidence which would establish that the landfill met condition two (2), above, must consist of a written representation by the appropriate Commonwealth Agency that the landfill was authorized to accept the hazardous wastes which it received under any then-applicable Commonwealth laws and/or regulations. In this case,

EPA would expect a written statement from the Environmental Quality Board that, prior to November 19, 1980, the landfill at the Ponce Municipal Dump was legitimately authorized to receive hazardous waste.

Please note that any determinations made with respect to the status of the landfill at the Ponce facility are independent of any enforcement actions that might be taken based on previously existing regulatory violations at the waste lagoons. Indeed, as I stated in my previous letter, we are in the process of preparing to issue an administrative complaint requiring the clean-up of the lagoons. We presently expect the Complaint to be issued within the next two weeks. Specifically, the Complaint will contain a Compliance Order with the following requirements:

1. Ponce will be required to establish a program of site security within fifteen days of the effective date of the Order.

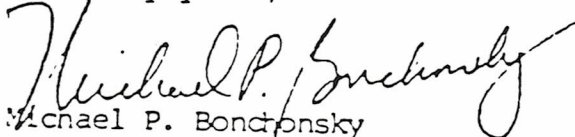
2. Ponce will be required to develop and submit to EPA closure and post-closure plans for the lagoons within thirty days of the effective date of the Order, and, within fifteen days of receiving approval of the plans, initiate the programs set out therein.

3. Ponce will be required to develop and submit to EPA a groundwater monitoring plan within thirty days of the effective date of the Order, and, within ninety days of the Order, implement said plan.

It is my understanding that certain of this information may have been previously forwarded to the Agency. If that is the case, we will, of course, take that fact into consideration. Also please note that the Agency is committed to taking into account "good faith" efforts when resolving enforcement actions. Evidence of such good faith will include any efforts made by the Municipality of Ponce to address the issues of concern to the Agency before a Complaint is issued.

Please address your response to this letter, including any information which you might have pertaining to the status of the landfill at the Ponce facility, to Bruce R. Adler, Attorney, General Enforcement Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278. Should you have any questions, please call Mr. Adler at (212) 264-9898.

Sincerely yours,



Michael P. Bondronsky
Acting Director
Enforcement Division

cc: Pedro Gelabert
Commissioner
Environmental Quality Board

GOVERNMENT OF PUERTO RICO
ECONOMIC DEVELOPMENT ADMINISTRATION

268 PONCE DE LEON AVE.
HATO REY, P. R. 00918

P. O. BOX 2350
SAN JUAN, P. R. 00936

JOSE M. COBIAN
DEPUTY ADMINISTRATOR

TEL: 765-1303
765-0358
765-2900
TELEX: 385245

July 19, 1982

Hon. Héctor Reichard de Cardona
Secretary
Department of Justice
G.P.O. Box 192
San Juan, PR 00902

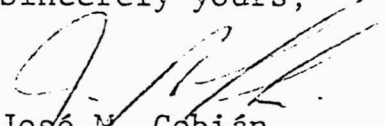
Dear Mr. Reichard de Cardona:

The Mayor of Ponce has filed with USEPA-Region II a request for designation of the Ponce Municipal landfill as a hazardous waste "existing facility" for the treatment and disposal of industrial wastes under Section 3005 of the Resource Conservation and Recovery Act of 1976. As a result of this action, USEPA has requested a legal opinion on the legality of the operations at the Ponce Municipal landfill. Specifically, they are interested in the assurance by an appropriate entity of the Government of Puerto Rico that the landfill received its wastes (both hazardous and non-hazardous wastes), since before November 19, 1980 in a lawful manner and in compliance with the applicable provisions of local law.

It is the opinion of our legal advisors, that both Secretary Jiménez Muñoz and yourself have expressed formal opinions on aspects of this issue with a number of addendums to said opinions which basically solve the issue at hand. Should that be the case in this specific matter, as we feel it is, a statement of further clarification and an enclosure containing previous opinions would probably suffice. However, what is essential is the prompt clarification of this matter since the designation of the Ponce Municipal landfill is of vital importance to the well-being of the industrial development of the island.

I am including for your consideration copy of pertinent official documents to this case.

Sincerely yours,


José M. Cobián
Acting Administrator

cc: Hon. Joselyn Tormos-Vega
Attachments

OUTLINE

Ponce Landfill started operations prior to the creation of the Puerto Rico Environmental Quality Board (EQB).

June 18, 1970

Law #9 created the EQB with legal partners to issue regulation for the control of wastes.

1973

Became effective EQB's original Regulation for the Control of Solid Wastes.

April 1980

EQB issued operating permit to Ponce Municipal Landfill (Attachment A).

June 1980

EQB gave an award for exceptional performance in the operation of the Ponce Municipal Landfill (Attachment B)

November 13, 1980

Became effective EQB's Regulation for the Control of Hazardous and Non-Hazardous Solid Waste which in:

1. Rule 903

Section A (Attachment C) required "existing hazardous waste facilities" to file for a permit to operate before May 13, 1982;

Section B (Attachment C) provides for submittal of the information required by this rule by submitting the information given to EPA in Part A or Part B of an EPA permit application by submitting a copy of the application. Part A application contained request to EPA for designation of the entire Municipal Landfill (See topographic map - page 6 XI.)

2. Rule 908

Section A (Attachment D) provides for submittal of initial compliance plan for existing solid waste facilities that have not attained initial compliance with one or more of the requirements. They are used to establish a schedule for achieving compliance with requirements being violated.

November 19, 1980 Ponce's Municipal Landfill applied to EPA for designation as a Hazardous Waste "existing facility" by submitting a Part A permit application pursuant to Section 3005 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901, et seq. the application claimed interim status for operation pursuant to said Section 3005 of RCRA. (Attachment E).

May 5, 1981 Ponce filed permit request under Rule 903 (Attachment F).

June 10, 1981 Secretary of Justice issues formal opinion (Attachment G) which states, among other things, that under Law #9 the term "solid wastes" includes also hazardous wastes both solid or liquid.

June 16, 1981 EQB issued operating permit to Ponce under Rule 903 for the entire Municipal Landfill as requested in the submitted copy of the federal Part A application (Attachment H).

March 18, 1982 Ponce filed officially the compliance schedule required in Rule 908 (Attachment I).

CONCLUSION:

Therefore, it is clear that the Ponce Municipal Landfill has always operated in a lawful manner with all pertinent permits and therefore, the wastes received both hazardous and non-hazardous were received legally.

Prior to the enactment of the EQB's hazardous waste regulations on November 13, 1980 Ponce could legally receive both hazardous and non-hazardous wastes since there was an absence of specific regulations applicable to hazardous wastes and the term solid waste in Law #9 applies to both hazardous and non-hazardous wastes. In the opinion of the Secretary of Justice dated June 10, 1981 in page 7 it states:

"Considered the context of Act No. 9 as a broad but carefully controlled delegation of authority, in my opinion, its scope was intended to be sufficient to reach "hazardous solid wastes" and those persons engaged in the "generation, transportation, storage, treatment, or disposal" of such wastes.

Act No. 9 does, despite the numerous references to "solid waste", authorize regulatory control over "hazardous" waste, solid or liquid. This authorization is based primarily in a broad reading of the act as a whole, but also in the specific reading of Sections 11(14) and 11(15) (12 LPRA Section 1131(14), (15)), supra.

It seems pertinent to not that the Regulation for the Control of Hazardous and Non-Hazardous Solid Wastes, represents the Board's increased awareness of the environmental problem posed by improper hazardous waste disposal, and in my opinion, it is within the range of developments envisioned by the Commonwealth Legislature when it enacted Act No. 9."

Even from November 13, 1980 up to the present the Ponce Land-fill has received hazardous wastes in compliance with applicable rules 903 and 908 of the Regulation.

Environmental
Quality Board

July 20, 1982

Hon. Carlos Romero-Barceló
Governor of Puerto Rico
La Fortaleza
San Juan, Puerto Rico 00901

Re: Ponce Municipal Landfill I.D.
No. PRT 000010231

Dear Romero-Barceló:

Reference is made to a letter from Mr. Michael P. Bonchonsky, Acting Director of the Enforcement Division, to Mr. José Tormos-Vega, Mayor of Ponce, dated July 8, 1982 related with the application of the Municipality of Ponce for interim status of their landfill as a hazardous waste facility pursuant to Section 3005 of the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. 6901.

The storage, transportation and disposal of hazardous and toxic wastes has been one of our top priorities since our administration came to office in 1977. The Environmental Quality Board (EQB) prepared and approved a comprehensive Regulation for the Control of Hazardous and Nonhazardous Solid Wastes and requested interim authorization from EPA to administer the regulation.

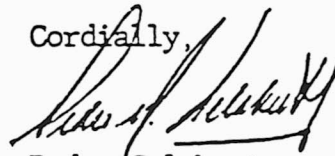
You as Governor, created an Interagency Committee to Develop a Policy for the Siting of Toxic and Hazardous Waste Facilities in Puerto Rico (Administrative Bulletin Number 3963-A, February 26, 1982) which Committee is composed of the following heads of agencies: (1) Environmental Quality Board, (2) Planning Board, (3) Department of Natural Resources, (4) Economic Development Administration, and (5) Solid Waste Management Authority. The Committee is presently working in the criteria for the siting of new facilities that will be applied by the Planning Board, the agency in charge of location approvals. However, the establishment of new facilities in Puerto Rico will probably take several years, since the design standards for existing and new facilities were just approved by EPA on July 13, 1982. In the meantime, Puerto Rico must depend on the existing facilities to dispose of the hazardous wastes generated in the island, specially when the ocean dumping permit in the Atlantic Ocean expired by the end of 1981.

Under your guidance and in consultation with you, we have developed our public policy and requirements necessary to upgrade the existing facilities to EPA's approved standards. The Ponce sanitary landfill is one of those facilities; thus it pleases us that EPA has reconsidered the denial for interim status based on:

1. "The facility must have been receiving wastes defined as hazardous within the meaning of the Act on or before November 19, 1980".
2. "The facility must have been authorized to accept the hazardous wastes at that time".

I am sure that the Municipality of Ponce will be able to provide the necessary evidence of the hazardous wastes received before November 19, 1980. The EQB is hereby certifying that the facility was authorized to accept hazardous wastes under the applicable laws and regulations prior to November 19, 1980.

Cordially,

A handwritten signature in dark ink, appearing to read 'Pedro Gelabert', written over a horizontal line.

Pedro Gelabert
President



Environmental
Quality Board


CERTIFICATION

The Environmental Quality Board hereby Certifies that the Ponce Sanitary Landfill was authorized to received hazardous wastes before November 19, 1980.

On March 28, 1980 the Environmental Quality Board granted SK&F Laboratories a permit to disposed of hazardous wastes on a pond within the Ponce Sanitary Landfill (see letter from Mr. Jaime Ortiz to Mr. José Caldas), under the previous Regulation for the Control of Solid Wastes.

On June 16, 1981 the Environmental Quality Board granted a hazardous waste interim permit to the Municipality of Ponce until the EQB could act on the final permit (see letter from P.A. Gelabert, C.A.P. Soderberg and S. Rohena, Jr., to Mr. José Tormos-Vega dated June 16, 1981). —

Certified on this date of July 28, 1981 at San Juan, Puerto Rico, by Pedro A. Gelabert, Chairman of the Environmental Quality Board.


Pedro A. Gelabert
Chairman